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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 22 2000

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	

BELLSOUTH'S OPPOSITION TO PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

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I. Introduction and Summary

BellSouth Corporation, on behalf of its affiliated companies[1] through undersigned counsel ("BellSouth"), and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), files its Opposition to the Petition of AT&T Corp. for Expedited Clarification or, In the Alternative, for Reconsideration ("AT&T Petition") and Petition for Clarification of MCI WorldCom ("MCI Petition") filed in the above captioned proceeding.[2]

1 BellSouth Corporation is a publicly traded Georgia corporation that holds the stock of companies which offer local telephone service, provide advertising and publishing services, market and maintain stand-alone and fully integrated communications systems, and provide mobile communications and other network services worldwide. BellSouth participated in all aspects of the pleading cycle in this rulemaking proceeding.

2 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147 and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order in CC Docket No. 98-47* and *Fourth Report and Order in CC Docket No. 96-98*, FCC 99-355, released December 9, 1999 ("*Line Sharing Order*" or "*Order*").

Both MCI and AT&T ask the Commission for clarification, or in the alternative reconsideration, on whether an incumbent local exchange carrier ("ILEC") must provide the elements that will allow a competitive local exchange carrier ("CLEC") providing voice service to a customer, to line share with another CLEC providing data service to the same customer. Under the scenario described by AT&T and MCI (sometimes referred to as "Petitioners"), the ILEC would be providing no service to the customer. Although MCI and AT&T have both labeled their petitions as primarily seeking clarification, the issue presented is not one open to interpretation. The Commission could not have been clearer in defining the ILEC's unbundling obligations for line sharing. One only need read the *Line Sharing Order's* Executive Summary to understand these obligations. There the Commission unequivocally states that, "[i]ncumbent LECs must provide unbundled access to the high frequency portion of the loop *to only a single requesting carrier, for use at the same customer address as the analog voice service provided by the incumbent.* Incumbents are not required to provide unbundled access to the high frequency portion of the *loop if they are not currently providing analog voice service to the customer.*"[3] After reading these statements BellSouth must question why exactly MCI and AT&T need clarification.

MCI and AT&T both ignore the plain language of the *Line Sharing Order*. Based on the plain language, the Commission should summarily dismiss Petitioners requests for clarification. Their requests for reconsideration should be dismissed as well. The Commission examined the issue raised in their petitions thoroughly in the *Line Sharing Order* and found that no impairment exists when an ILEC is not providing the voice service. Accordingly, pursuant to statute, the

[3] *Line Sharing Order* at 6 (emphasis added).

Commission cannot require the unbundling of a network element where the Commission has found no impairment.

II. The *Line Sharing Order* Needs No Clarification

The petitions struggle to extract a meaning from the words of the *Line Sharing Order* different from what the *Order* made unmistakably obvious. The *Line Sharing Order* specifically states "[t]he provision of xDSL-based service by a competitive LEC and voiceband service by an incumbent LEC on the same loop is frequently called 'line sharing.'"[4] Thus, by definition, the *Line Sharing Order* clearly contemplated and mandated line sharing obligations *only* in those situations in which the ILEC provides the voice service to the customer.

Petitioners present a situation not addressed in the *Line Sharing Order* – two carriers providing services over the same loop when the ILEC is not the voice service provider. While this situation may be line sharing in the technical sense, it does not trigger the ILEC obligations established in the *Line Sharing Order*. Indeed, the Commission went out of its way to limit such obligations to only those situations where the ILEC provides the voice service.[5] BellSouth does not dispute that under certain circumstances two CLECs may, on a voluntary basis, provide separate services to the same customer over the same loop. Throughout the line sharing proceeding BellSouth and other ILECs noted that CLECs could obtain from ILECs necessary network elements and combine them to provide multiple services to end user customers. The Commission acknowledged this point stating "that self-provisioning a circuit-switched network is not the sole means of providing voice service. In particular, requesting carriers could obtain combinations of network elements and use those elements to provide circuit-switched voice

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[4] *Line Sharing Order* ¶ 4.

[5] *See* Section II.A below.

service as well data services."[6] In explaining its position the Commission then stated "[i]n this scenario, *a requesting carrier would essentially share the line with itself by attaching a splitter to the loop at a technically feasible point* and separating the voiceband from the high frequency portion of the loop to provide both voice and xDSL services."[7] Thus, the Commission recognized that the CLEC would have to install the splitter in order to combine the elements to provide voice and data services.

In that situation, however, the ILEC should not be involved – it has nothing to share. This is strictly an arrangement between the two CLECs. The Commission did not leave the ILEC's obligations in such situation open for question.

A. ILECs' Obligation for Line Sharing

The Commission carefully delineated the parameters governing when an ILEC must provision line sharing, including line sharing capabilities:[8]

> [The Commission] require[s] incumbent LECs to provide *access to this network element to a single requesting carrier, on loops that carry the incumbent's traditional* [plain old telephone service ("POTS")], to the extent that the xDSL technology deployed by the competitive LEC does not interfere with the analog voiceband transmissions.... The record does not support extending line sharing *requirements* to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop for a competitive LEC to obtain *access* to the high frequency portion.[9]

BellSouth finds a common theme runs through these statements, a theme that MCI and AT&T have missed – line sharing requirements, including access to the high frequency portion of the loop, arise only when the ILEC is providing the voice service.

6 *Line Sharing Order* ¶ 47.

7 *Id.* ¶ 47 n. 95 (emphasis added).

8 *See Line Sharing Order,* Section IV.D.1., Parameters for Line Sharing Deployment.

9 *Id.* ¶ 70, 72 (emphasis added).

MCI states in its petition that "the Commission should clarify that ILECs must take all necessary steps to allow UNE-P CLECs to self-provision or partner with facilities-based data CLECs to provide voice and data service to the same customer."[10] In essence, MCI's request is that ILECs should take all necessary steps to allow two CLECs to provide services over the same loop, *i.e.*, all of the obligations that the ILEC has under the *Line Sharing Order*, when the ILEC does not provide any service to the customer. Indeed, the petition goes on to state that "the ILECs should provide CLECs with the same functions they already perform in support of ILEC line sharing."[11] MCI defines these functions as the ILEC's provisioning and connecting the splitter, performing all cross-connects between the two CLECs' equipment[12] and the ILEC's equipment, if necessary, all Operations Support Systems ("OSS"), trouble-reporting, and trouble-shooting functions.[13]

MCI's interpretation reads the requirement that limits "*access to this network element to a single requesting carrier, on loops that carry the incumbent's traditional POTS*" out of the *Line Sharing Order*. The *Order* limits not merely the "use" of the high frequency spectrum, but also "access to" the high frequency spectrum, to loops that carry ILEC POTS. BellSouth asks what "access" could possibly mean if not the equipment to provide line sharing, such as the splitter and cross connects. The Commission reemphasized the limitation on access when it said that it was not extending "line sharing *requirements* to loops that do not meet the prerequisite condition that an incumbent LEC be providing voiceband service on that loop for a competitive

10 MCI Petition at 4.

11 *Id.* at 6.

12 *See infra* fn. 19.

13 MCI Petition at 6.

LEC to obtain *access* to the high frequency portion."[14] Requirements for a CLEC to obtain access to the high frequency portion of the loop obviously include provisioning. Moreover, it is axiomatic that if there is no requirement to provide access to a network element, then there is no requirement to provide any associated unbundled OSS and trouble maintenance.[15]

Not only did the Commission clearly limit ILECs' line sharing obligations only to those situations when the ILEC is the voice service provider, but did so based on the fact that any impairment a CLEC may experience from not having access to the high frequency spectrum on the loop only exists when the ILEC is the voice provider. The Commission stated unequivocally that "*we do not find impairment where the incumbent LEC is not providing voice service on the customer's loop*, or where the competitive LEC is seeking to deploy a form of xDSL that is not compatible with voice service provided on a shared line."[16]

Both AT&T and MCI are well aware of the requirements set forth in section 251 of the Telecommunications Act of 1996 ("1996 Act") and the Supreme Court decision interpreting the statute in *AT&T v. Iowa Utilities Board*, 525 U.S. 366 (1999). In particular, a requirement to unbundle an element may be imposed only if it meets the standard established in section 251(d)(2), which states:

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14 *Line Sharing Order* ¶ 72.

15 Petitioners cannot reasonably argue that OSS and other operational support functions will be too difficult for two CLECs to implement. The record is replete with comments filed by CLECs that OSS and other support functions are easy to implement and can be done in a matter of weeks. *See e.g.*, report prepared by Dennis J. Austin of the Maxim Telecom Consulting Group ("MTG") filed with the Commission on September 30, 1999 in CC Docket 98-147.

16 *Line Sharing Order* ¶ 72, fn. 160 (emphasis added). *See also* ¶ 74 (The Commission stated "[w]e agree with both incumbent and competitive LECs that the unbundling obligations should be defined *to permit only a single competitor to share the line with the incumbent*. The record indicates significant support for two-carrier line sharing arrangements, *with an incumbent LEC providing analog, circuit-switched voice service and a competitive LEC providing data service*.")(emphasis added).

(2) ACCESS STANDARDS – In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether—

> (A) access to such network elements as are proprietary in nature is necessary; and
>
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

Applying this standard, the Commission specifically determined that failure to provide access to the high spectrum frequency on a loop would not impair CLECs when the ILEC provided no voice service on that loop.

B. ILECs' Obligations for Line Sharing when a CLEC is the Voice Carrier under UNE-P

Both Petitioners focus attention on two CLECs being able to provide services over a shared loop when one of those CLECs is providing voice service to the customer through a UNE-P. The above discussion leaves no doubt that an ILEC's obligations regarding line sharing are limited to only those loops for which it is the provider of the voice service. This limitation of course applies no matter the reason the ILEC no longer provides the voice service; the limitation applies, in particular, once a CLEC begins providing the voice over a UNE-P. And, to make sure there was no confusion on this issue, the Commission stated "[s]imilarly, incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform [UNE-P]. In that circumstance, the incumbent no longer is the voice provider to the customer."[17] Thus, for the reasons discussed above, ILECs have no obligation to offer line sharing to CLECs that provide voice service over UNE-P. This

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[17] *Line Sharing Order* ¶ 72.

position needs no clarification. Additionally, the Petitioners offer no reasoning why the Commission should change its position on reconsideration.

C. Voluntary Agreements between CLECs to Share a Loop

Petitioners' dubious request for clarification completely distorts what the Commission actually meant in the *Line Sharing Order* – that two CLECs can enter into voluntary agreements to provide services over a shared loop. In such situations, however, the ILEC is not and should not be a party. Indeed, both Petitioners devote much of their petitions to arguing that CLECs may share a loop. Subject to the ILEC not being forced to be a party to the CLECs agreement or having to provision access to the high frequency spectrum,[18] BellSouth does not disagree. If it obtains a combination of elements from the ILEC and installs its own splitter and DSLAM, a CLEC is then free to partner with another CLEC, through a voluntary agreement, to provide both voice and data services to a single customer.[19] Other than providing the network elements to provide the voice service, however, the ILEC should play no role in this transaction.

Petitioners labor to find support for their position that ILECs should not only provide the network elements for voice but should also provide the CLECs access and OSS support to the high frequency portion of the spectrum so that one CLEC can provide the data service. For example, MCI quotes sections from the *Line Sharing Order* to demonstrate that the Commission "intended to permit CLEC-to-CLEC line sharing when the ILEC is not the voice provider to residential and small business customers."[20] As discussed above, BellSouth agrees that CLEC-

18 *See* discussion at section II.A. *supra*.

19 This arrangement would be subject to collocation restrictions recently addressed by the Court of Appeals for the District of Columbia and any subsequent collocation orders the Commission may issue to conform with this opinion and section 251(c)(6). *GTE Service Corporation, et al. v. FCC*, No. 99-1176, slip op. (D.C. Cir. March 17, 2000).

20 MCI Petition at 5.

to-CLEC line sharing should be allowed as long as the CLECs do all provisioning and operational support, *i.e.*, the ILEC's role is limited to providing the network elements needed for voice service.

MCI, however, interprets Section 319(h)(3) of the Commission's rules[21] "only to contemplate that ILECs should not be compelled to line share the high frequency portion of the loop if a CLEC is *already* the voice provider – because the ILEC, in essence, has nothing to share."[22] MCI reaches this nonsensical interpretation even though nothing in the *Line Sharing Order* or the cited rule can reasonably be read to support such a construction. Even if one were inclined to entertain MCI's interpretation of the rule, one must ask why the ILEC would have anything more to share when the CLEC is already the voice provider. Both ways two CLECs will be sharing the loop, and in MCI's own words "the ILEC…has nothing to share." Of course, if the ILEC has nothing to share, it should not be a part of any agreement between the two CLECs.

D. AT&T's Request to Force ILECs to Provide ADSL

AT&T argues that in addition to allowing two CLECs to use the same line, similar to line sharing, an ILEC should be forced to provide its ADSL service over a UNE-P over which a CLEC is providing voice service, *i.e.*, the ILEC must continue to provide its ADSL service to a customer even if the ILEC no longer provides the voice service. There is no pro-competitive or public policy reason to require an ILEC to offer a highly competitive service such as ADSL in any particular fashion, *e.g.*, over a CLEC's loop. Indeed, the impetus behind line sharing was the

21 Section 319(h)(3) states: An incumbent LEC shall only provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting carrier seeks access.

22 MCI Petition at 5 (emphasis in original).

claim that data CLECs could not effectively compete when ILECs provided both voice and data over the same loop. The CLECs claimed that ILECs ability to provide voice and data put CLECs at a competitive disadvantage in offering DSL, a competitive service, because of the cost involved in entering the voice market.[23] When the ILEC no longer offers the voice service, any perceived competitive disadvantage is eliminated. Furthermore, the Commission's determination that data CLECs are impaired by not being able to provide DSL service without voice is meaningless if the Commission adopted AT&T's theory that voice providers are impaired unless ILECs are forced to provide DSL service. If the Commission's initial decision that data CLECs are impaired without voice is correct, plenty of data carriers should be eager to provide their ADSL on AT&T's loops. Indeed, ILECs may find it in their best interest to do so as well, but they should be permitted to make this decision based on market conditions and their own business plans. The Commission should not dictate how ILECs offer their competitive services.

Moreover, BellSouth provides its ADSL services pursuant to a federal tariff that the Commission investigated and found it to be lawful.[24] The tariff clearly states that in order for ADSL service to be available the end-user premises must be served by an existing BellSouth voice service. Tariffed services are not subject to section 251 unbundling requirements. Indeed, nothing in the 1996 Act requires ILECs to place its tariffed services on another carrier's

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23 *See Line Sharing Order* ¶ 56 ("...it is the fact that the incumbent is already providing voice service on a loop that makes the preservation of competitive access to the high frequency portion of that loop so vital. Without line sharing, competitors would face substantial barriers to market entry, such as additional required investment for voiceband equipment and facilities, and the difficulties of competing against an entrenched, market-dominant competitor.")

24 *In the Matter of Bell Atlantic Telephone Cos., Bell Atlantic Tariff No. 1, Bell Atlantic Transmittal No. 1076, et al.*, CC Docket Nos. 98-168, *et al.*, *Memorandum Opinion and Order*, FCC 98-317, released November 30, 1998.

facilities, even if the carrier obtained those facilities from the ILEC. If AT&T wants to challenge BellSouth's tariff it should do so through the proper forum and not by a Petition for Reconsideration/Clarification.

III. The Commission Should Deny Petitioners Claims for Reconsideration

To the extent that Petitioners have labeled their petitions as requests for clarification, the above discussion fully demonstrates that no clarification is needed. The *Line Sharing Order* needs no elucidation on the points raised in the petitions. In the alternative, the Petitioners request that their claims be treated as issues for reconsideration. The Commission's *Line Sharing Order*, over seventy-seven pages long, is the product of a proceeding that had over thirty-five parties, including Petitioners, filing comments. During this proceeding, the Commission thoroughly reviewed not only the analysis of the comments and the reply comments, but also numerous *ex partes,* and then formed its conclusion that an ILEC should be required to provide access to the high frequency portion of the loop, *i.e.,* line sharing, only when the ILEC is providing, and continues to provide, analog circuit-switched voiceband services on that particular loop. Indeed, the Commission specifically found impairment to be absent when the LEC is not providing voice service on the customer's loop. Beyond their farcical interpretations of certain sections of the *Line Sharing Order*, the Petitioners offer no new insights or information. They certainly offer nothing that should prompt a reconsideration of the conclusions drawn from the earlier deliberative process. For all these reasons, the Commission should deny AT&T's and MCI's requests for reconsideration.

IV. Conclusion

The Commission's Order is clear. As discussed herein, Petitioners' requests for clarification or reconsideration are completely without merit and should be denied. Any other decision would make a mockery of the unmistakable wording of the *Line Sharing Order*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 22nd day of March, 2000, served the following parties to this action with a copy of the foregoing ***BELLSOUTH'S OPPOSITION TO PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION***, reference CC Docket No. 98-147 and CC Docket No. 96-98, by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below:

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